A

SERMON

PREACHED

Before the

UNIVERSITY

OF

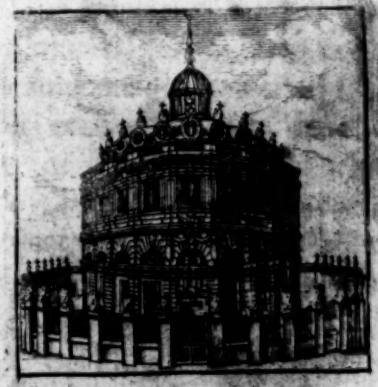
OXFORD

December 4. 1687

CONCERNING

The Obligation of Oaths.

By HENRY HELLIER, M. A. of C. C. C.



OXFORD,
At the THEATER for *Richard Chiswel*, London.
M. DC. LXXXVIII.

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UMI

Pſalm 15. 4. He that *ſweareth to* his own *hurt and changeth not.*

THIS Pſalm contains a *Dialogiſm*; or diſcourſe of the Royal Prophet within himſelf where he firſt propoſeth a queſtion, and afterwards gives the anſwer. The queſtion is in the firſt verſe. *Lord, who ſhall abide in thy Tabernacle? who ſhall dwell in thy holy hill?* that is, who ſhall be accounted worthy to be a member of thy faithfull congregation here, and to be admitted into thy preſence hereafter? The anſwer contains firſt in general the whole Duty of man, *he that* v. 2. *walketh uprightly and worketh righteouſneſs*, &c. afterwards divers duties in particular; and among the reſt, this of conſtancy and faithfulneſs in keeping thoſe promiſes which we have confirmed by an Oath. And becauſe the greateſt temptation to the breaking of Oaths proceeds from feare of ſome temporal damage, or proſpect of ſome worldly advantage; therefore it is ſaid, *he that ſweareth to his hurt and changeth not.* We are alſo hereby to underſtand, that ſince the Pſalmiſt hath given us this for a diſtinguiſhing Character of thoſe perſons who are to enter into the kingdom of heaven, it is implied that ſuch as have not this qualification, ſhall not enter therein, and conſequently he ſhall be excluded, who

A recedes

recedes from thoſe Oaths which he had once made, though the performance of them proves never ſo much to his diſadvantage.

But 'twill be to little purpoſe to preſs and inculcate the neceſſity of performing any duty, unleſs in ſome meaſure we may be ſatisfied to what caſes the duty doth extend: and this will be more eſpecially needfull in diſcourſing on our preſent ſubject, which doth contain ſo great variety of doubts, occaſioned by the particular circumſtances of ſome, and by the wanton inventions of others, that one cannot eaſily comprehend them all, or place them in a right order, or reduce them to certain rules. Nevertheleſs I ſhall endeavour to lay down ſuch principles, as we ought for the moſt part, in the reſolution of particular difficulties, to be directed by. And to that end I ſhall enquire.

1. I what caſes an Oath doth oblige, and whether it may be taken for a general rule, that he who hath ſworn *to his neighbour*, muſt not *change*.

2. According to whoſe ſenſe it doth oblige. For unleſs that be cleared, it will be ſometimes difficult for a man to know himſelf, more difficult for any one elſe to know, whether he hath done according to his Oath or no.

3ly. And laſtly after having conſidered in what caſes, and according to whoſe ſenſe an Oath is obligatory, it will be fit to ſhew, what it is to be ſo obliged, how great the obligation of an Oath is, that we may both ſee with how much juſtice the keeping of Oaths is required of all thoſe who do expect Gods favour, and may alſo be our ſelves induced to anſwer

this

this part at leaſt of the Character of a righteous man. He that *ſweareth* to his *hurt*, or, as ſome have it, he that *ſweareth to* his *neighbour* and *changeth not*.

1. And firſt to underſtand when an Oath doth oblige, we may obſerve, that all, or at leaſt the principal caſes are reducible to 3 heads, foraſmuch as they concern the matter of the Oath it ſelf, the perſon ſwearing, or the perſon to whom 'tis ſworn.

1. There are divers caſes relating to the matter of the oath it ſelf. It may be impoſſible, or unlawful, or an obſtacle to a greater good, or purely indifferent, or a thing concerning which a man doth doubt whether it be lawfull or no.

1. No oath can oblige to that which is impoſſible. And therefore if the matter were impoſſible at firſt, it was indeed a fault to ſweare, but it can be no fault afterwards not to do that which cannot be done. If the matter at firſt were not, but now is become impoſſible by the ſwearers fraud or negligence, then it is to be look'd upon as omitted when 'twas poſſible. But if it be ſo now by ſome unlikely and unforeſeen accident; as for inſtance; if a man promiſe to another the uſe of his houſe which afterwards happens to be burnt down, no man will think the promiſer at all blameable in ſuch a caſe, although the promiſe were never ſo ſolemnly confirmed by an oath.

2. No oath can oblige to that which is unlawfull. And therefore if a man hath not ſworn in *juſtice*, that is to ſay, if he hath ſworn to any unjuſt or diſhoneſt action, he is not obliged to perform according to what he hath ſworn; neither can he ſo perform it as to make it true. *Jer.* 4.2.

He is not obliged to perform according to what he hath ſworn. Becauſe no man can by breaking one of the Commandments, acquire to himſelf leave, much leſs an obligation to break any of the reſt. The rules of morality are eſtabliſhed by God for ever, and ſome of them ſo neceſſarily conſequent upon his attributes, as not to be changed by himſelf; much leſs can they be made of none effect by any contrary act of ours. Beſides, it were a contradiction for a man to be bound in duty to do contrary to his duty; that the ſame thing ſhould be commanded and prohibited by the Laws of God at the ſame time; that a man ſhould be obliged under penalty of damnation to do that, which God under the ſame penalty hath already forbidden. If theſe things were reconcileable, it would be an eaſy matter for any man to reverſe all the Commandments, and oblige himſelf to live in a continual breach of them, ſeing he could by once ſwearing make himſelf to have what Laws he pleaſed, or to have no Laws at all, either about oaths or any other matter. Therefore a man is not obliged to perform according to ſuch an oath.

Neither can he ſo perform it as to make it true. For it is falſe as ſoon as it is taken. It is juſt as if he had ſworn to that which is impoſſible. *Id quiſque poteſt facere quod poteſt jure facere.* That which a man cannot lawfully do, he cannot do. He can only add one ſin to another, and increaſe his guilt by thus endeavoring to take it off. As did *Herod* in beheading *John* the Baptiſt.

And from hence we may know how to make a right

right judgment of divers caſes wherein particular virtues are concerned; caſes, wherein an oath would otherwiſe engage men to do acts contrary to Piety, or Juſtice, or Charity, or Humanity, or the like; for example:

Piety requires us not only in general to keep the Commandments of God, but more eſpecially to obſerve and attend his immediate worſhip. No oath therefore can oblige a man not to worſhip God, or not to worſhip him in a due manner, or not to worſhip him at fit times, or to pay that worſhip or that honour to any other which is due only to him.

Juſtice requires that we do not invade the rights and privileges of other men. And therefore

If a ſuperior hath power of commanding our ſervice in any matter, we may not without his conſent engage our ſelves in another that is inconſiſtent; or, if we do, 'tis ſtill to be underſtood with this *proviſo*, as long as he gives us leave. The power of a King cannot be limited by any oath of his ſubject, or of a Father by that of his Child, or of a Maſter by that of his Servant. Thus in the 30th. of Numbers, *the vow of a woman being in her Fathers houſe in her youth, is of no effect if her Father diſallow her in the day that he heareth thereof*; *and the vow of a wife is of no force, if her husband diſallow her in the day that he heareth thereof*; becauſe it were abſurd to think that they by ſwearing or vowing could limit their ſuperiors power, or give away that which was not at their own diſpoſal. If therefore any Superior by Statute hath reſerved to himſelf, or by his prerogative may claim, or time out of mind hath had, the diſpoſal

of any place or office by virtue of his own power; then no inferiors oath can be of ſufficient force and validity to prejudice that power. But if there never were any ſuch power, or if that power were given away, or if that Superior hath conſented to Statutes, and in them to oaths whereby men have ſworn to certain things which are limitations of the ſaid power; then the matter of the oath being juſt, and charitable, and encouraged by a lawful Authority, there being, beſide the inferiors oath, the ſuperiors own * *act* there is perhaps ſcarce any pretence upon which ſuch an oath can be accounted invalid, or ſuppoſed to imply any farther limitation.

* *But if her husband altogether hold his peace at her, from day to day; then he eſtabliſheth all her vows, or all her bonds which are upon her: he confirmeth them, becauſe he held his peace at her, in the day that he heard them. Numb. 30. 14.*

And as an inferior cannot limit his ſuperiors power by ſwearing, ſo neither can a ſuperior that of his inferior, nor any man the rights of any man, becauſe it is ſtill contrary to juſtice.

For the ſame reaſon of juſtice no one can invalidate an oath by ſwearing qaite contrary to what he ſwore before, or to what he barely promiſed; for a promiſe is a transferring of right from our ſelves to him who receives the promiſe; we cannot therefore diſpoſe otherwiſe of a thing that is ſo transferred, or load it with other conditions then at firſt were made; for in ſo doing we endeavour to give away that which is none of our own.

Alſo oaths contrary to Charity, or Mercy, or Humanity are void; as if a man ſhould ſwear not to give any thing to his Children, not to alter his Will, not to give Alms to the poor, never to lend mony, never to become ſurety for any man; and afterwards reaſonable and pious motives to do ſuch actions do offer

offer themſelves, it would be many times an uncharitable, an unmercifull, an inhumane practice to keep ſuch kind of oaths.

And thus are we to determine in other caſes of the like nature; taking it always for granted, that no oath can oblige any perſon to commit a ſin, or privilege him from keeping the Commandments of God: according to that old rule; *Juramentum non poteſt eſſe vinculum iniquitatis.*

A 3d. caſe taken from the matter of the oath, is, when it hinders a greater good. And here we are firſt of all to preſume, that a man was not by virtue of any precept obliged to that good, for then this would be the ſame caſe with that which went immediately before: and in the next place we may affirm, that a man ought not to recede from his oath for the ſake of doing a greater good; for example; if any ſwear to another that he will give him freely a ſumm of mony, he muſt not afterwards beſtow that on the poor, upon pretence of doing a greater good: becauſe, asw as ſaid before, a promiſe is a transferring of right; and though to give alms be a virtuous action, yet we are not allowed to take them out of other mens goods.

But what if in the 4th place the matter be purely indifferent? There can be here no occaſion of difficulty, except the matter be alſo of no moment. And he is undoubtedly guilty of great irreverence towards God, that will cite his name to a trifle. But yet if any man be in ſuch unhappy circumſtances, if he hath taken an unlawful oath, to do an indifferent, but not an unlawful thing, he is obliged to per-

perform according to what he hath ſworn; & though the Schoolemen think not, becauſe the matter it ſelf is but ſmall; yet when a man hath bound himſelf by an oath, it becomes a great matter; and ſo much the greater crime it is to do contrary to ſuch an oath, by how much the eaſier it was to have made it good.

5. If the matter of the oath be ſuch, as cauſeth a man to doubt whether it be lawful or no, in that caſe, ſay ſome, *juramentum valeat quantum valere poteſt*: For the reverence due to an oath, he ought, if he cannot be otherwiſe well convinced, rather to perform; according to that maxime, *in dubiis pars tutior.* As if, firſt to ſwear to, and afterwards to do an unlawful thing, were not as great a crime, as ſimply to break an oath. A doubtful conſcience is unfit for action; and the beſt advice at ſuch a time is, that a man ſhould uſe due diligence to informe and ſatisfy himſelf, ſeeing God doth not require a duty of any man, which he hath not provided methods for him to underſtand. And ſo much for the caſes which concern the matter of the oath.

2. There are others relating to the perſon that ſwears. And here whenſoever we ſhall determine that an oath doth not bind, 'twill be for want of the perſons rightly underſtanding that he made one.

If any one therefore ſwears, that knows not what an oath is, or is not *doli capax*, either by reaſon of his years, or becauſe he is a natural fool, or madman, we cannot then ſuppoſe that he is obliged to rules.

If a man be diſturbed with anger, or overtaken with

with drink, we are then to conſider, whether it were in ſo high a degree, as to take away the uſe of his reaſon; which if it plainly appear, either from the temper of the man, or from the groſs abſurdity of the matter, then he is not bound; but otherwiſe, namely, if the perſon underſtood what he was about, and the matter be tolerably juſt and equall, it is hard to allow his caſe to have been ſo bad, as that he ſhall not be afterwards obliged to perform.

And much after this way ſhould we anſwer in the caſe of fear, or any other paſſion. For it is a principle of very ill conſequence to hold, that oaths and promiſes are of no force which are extorted by fear, though it be limited, as Civilianus will have it, to fear that may fall *in conſtantem virum*. For, ſuppoſe a man juſtly condemned to dye, ſhould offer money to ſave his life, and ſwear to the payment of it; ſhall not he be afterwards obliged, becauſe of his fear? what would become of the oath of allegiance and ſome Teſts, if all men might be excuſed from keeping them, who were induced to take them for fear of looſing offices and places of truſt, money, or credit, or in ſome places life it ſelf? Perhaps it will be ſaid, that this ought to be underſtood of a fear unjuſtly cauſed. But who ſhall be judge of that? Beſides, injuſtice in the impoſer will not excuſe perfidiouſneſs in the taker. The paſſion is neither greater nor leſs for being unjuſtly cauſed. And no man of a conſtant mind, will ſuffer any force, whether juſt or unjuſt, to prevail ſo far upon him, as to induce him to ſwear to that, which he either cannot or will not perform. And therefore if a man, to ſave his life, ſwears,

even to theeves and robbers, to do any thing that is not otherwiſe unlawful, his fear is no ſufficient plea to recede from ſuch an oath, becauſe it was not ſo great, as to deprive him of the uſe of his reaſon, or to hinder him from making a prudent choice.

And for the ſame reaſons it is not lawfull, becauſe an oath is unjuſtly impoſed, to uſe *equivocations* or *mental reſervations*, which are as bad as downright falſehoods, as will appear anon.

I ſhall ſay no more at preſent, of any other caſes relating to the perſon that ſwears, becauſe the doubts which may ariſe from his erring about the ſubſtance, or the cauſes, or the conſequences of his promiſſory oath, are more fit to be placed under the 2^{d}. general head of this diſcourſe, when we come to ſhew in what ſenſe an oath ought to be taken.

3 A third ſort of caſes are taken from the perſon to whom the oath is made. Perhaps he is an Idolater, an Heretick, a Rebel, a profeſſed Enemy, a Perjured perſon, or ſuch like. And theſe circumſtances we need not conſider apart, but may give a general rule, once for all, that none of them can be a ſufficient excuſe for any man to break his oath. Becauſe by the Law of Nations, oaths ought to be inviolable; and therefore every one, how falſe ſoever he is, or may have been himſelf, yet ſo long as he is partaker of human nature, retains a right to be faithfully dealt withall by other men. Otherwiſe, indeed, there could be no ſuch thing as a Law of Nations; there could not be any ſecure dealing, either in time of War or Peace, between ſo many Nations

tions and people of different inclinations and Religions. And if it ſhould once happen, that their quarrels break out into War, it would be impoſſible ever to make articles of agreement. It is not therefore enough for us to ſay, that a perfidious perſon deſerves no better uſage then himſelf will afford to others; unleſs we can alſo ſhew, that we have a right to inflict ſuch a puniſhment upon him. And ſuch right we can never obtain, by reaſon of his breaking his faith, with others, with our ſelves, or with God. Not becauſe he hath broken his faith with others, unleſs it will follow alſo, that we may rob or ſteal from, or commit any other treſpaſs upon any man that hath ever done the like to others. Nor becauſe he hath broken his faith with us. 'Tis true indeed, that if the promiſe be made to him under a condition, and that condition be not performed, the promiſſory oath can no longer oblige, becauſe no oath obligeth to more then it implies. Other his perfidiouſneſs cannot afford us any ſuch privilege; both, becauſe it is not lawfull to puniſh one ſin by the commiſſion of another, and alſo, becauſe we have renounced all exceptions taken from his former faults, by ſwearing to him, and making a contract with him. And, if it be ſufficient to allege, that he hath broken his faith with God, we may by the ſame reaſon, pretend to a liberty of breaking our faith with any man, that hath ever broken his *Baptiſmal* vow. Concerning the oath of *Joſua* and the *Princes of Iſrael* to the *Gibeonites*, it is very well known, that they held themſelves with the greateſt exactneſs bound to keep it, though it was obtained from them by fraud;

that God himſelf ſhewed he approved the keeping of it in *Joſua*, by an eminent victory, and revenged the breaking of it upon *Saul* by 3 years Famine, and the death of ſeven of his Sons. And yet theſe *Gibeonites* were Heathens, Idolaters, worſhippers of Devils, perſons, whom God had given the *Iſraelites* leave utterly to deſtroy. For I call that leave, and not a command of God to deſtroy the ſeven Nations. *Deut.* 20. 17. and M^r. *Selden* in his book *de jure naturali & gentium juxta doctrinam Hebræorum*, ſays, the antient *Rabbins* did ſo expound it. Or, if a command, it was not abſolute, but conditional. Which ſeems to be intimated in *Joſ.* 11. 19 and 12. Where it is ſaid; *There was not a City that made peace with the Children of Iſrael, ſave the Hivites the inhabitants of Gibeon*; *all* other *they took in battle. For it was of the Lord to harden their hearts, that they ſhould come againſt Iſrael in battle, that he might deſtroy them utterly*, and *that they might have no favour, but that he might deſtroy them, as the Lord commanded Moſes.* by which it ſeems, that there had been no neceſſity of deſtroying the reſt of thoſe Nations, had they offered themſelves voluntarily to become Tributaries and Servants, and had not *their hearts* been *hardened* to come againſt *Iſrael in battle.* Moreover, if Gods command had been abſolute, we muſt either ſuppoſe ſome private Revelation to recall it, which is unlikely, ſeeing it is not that, but the oath that is in expreſs terms inſiſted upon; or elſe the oath of *Joſua* and the *Princes of the Congregation* had been unlawfull as to the matter of it, becauſe contrary to the expreſs precept of God, and therefore ought not

lib. 6. cap. 16.

to

to have been kept, by whatſoever means they had beed induced to take it. Whence it would follow, that *Joſua* in ſparing them had been guilty of a greivous crime; and that the deſtruction of the *Gibeonites* by *Saul* had been a commendable action, which yet God Almighty was ſo diſpleaſed with, as to puniſh it after the manner already ſpoken; and that we may be aſſured it was for that, and no other cauſe, he ſaith expreſsly, 2. *Sam.* 21. 1. *It is for Saul and for his bloudy houſe, becauſe he ſlew the Gibeonites. Now the Gibeonites* (as it follows, in the next verſe) *were not of the Children of Iſrael, but of the remnant of the Amorites, and the Children of Iſrael had ſworn unto them.* It is not any converſion of the *Gibeonites* to the *Jewiſh* Religion, or any revocation of Gods command, if ſuch there were, but the oath only, that is here, and in other places mentioned, as the ground of the obligation which the *Children of Iſrael* lay under to ſpare them. Whereby the Scripture ſheweth us, that oaths and promiſes, to what people or Nation ſoever they be made, ought inviolably to be kept.

And ſo much may ſuffice for caſes of the third kind, which are taken from the perſon to whom the oath is made.

Hitherto nothing ſeems to hinder, but that we may take it for a general rule, that he who hath *ſworn to* his *neighbour* muſt not *change*; for in the firſt rank of caſes, where the matter was unlawfull or impoſſible, the oath was irrecoverably falſe; and in the ſecond rank, where the perſon was not in a condirion to underſtand what he was about, no oath can properly be ſaid to have been taken at all.

In all other caſes an oath doth oblige; it obligeth (I ſay) to as much as it implies; but that we may know, how much that is, let us conſider in the 2d. place

2. In what ſenſe an oath ought to be taken. In order whereunto we cannot uſe a better rule, then the antient *Civilians* give us for the interpretation of every doubtful ſpeech. *Quoties idem ſermo duas ſententias exprimit, ea potiſſimum excipiatur, quæ rei gerendæ aptior eſt.* That ſenſe is to be taken which is moſt ſuitable to the buſineſs men are about. And this rule, as in all other dealings and contracts, ſo eſpecially where there is the intervention of an oath, we ought religiouſly to obſerve; that neither our neighbours may be impoſed upon, nor the Holy Name of God abuſed, to malitious and deceitful, or to vain and inſignificant purpoſes. And ſince an oath was deſigned, as we find it *Heb.* 6. 16, to end controverſies, and to make men confide in one another, it ought to be interpreted in ſuch a ſenſe as is moſt likely to anſwer that end.

l. 67. *ff. de regulis juris.*

For which reaſon we may not preciſely, without limitation, accept the ſenſe of the ſwearer, or of the impoſer, or that which the words of the oath will bear.

1. Not of the ſwearer; becauſe he may *equivocate*, or uſe *mental reſerves*; he may (as the *Jeſuites* commonly allow) ſay the words of the oath, *and not intend to ſwear*, or *intend to ſwear, and not intend to be obliged*; which kind of excuſes, ſeeing they quite pervert the end of any oath, are never to be permitted. But let us ſpeak ſomething of them ſeverally.

1. No

1. No man can ſave himſelf harmleſs by *equivocation*; that is to ſay, by ſwearing to what he knows to be falſe, in the ſenſe of him to whom he ſweareth, but true in a private concealed ſenſe of his own. For, as in the caſe of lying, it is not miſconceiving the matter our ſelves, but ſpeaking contrary to our knowledge in order to deceive others that makes the fault; ſo it is in the caſe of perjury. We ſpeak not to our ſelves when we ſwear, but to others, for the ſatisfaction of whom the oath is made. And therefore if there be any ſuch thing as perjury, that man is guilty of it, who ſwears to that, which he knows or thinks to be falſe, in the ſenſe wherein he would have the impoſer to underſtand him.

2. And the ſame reaſon will condemn *mental reſervations*, when a man keeps ſomething in his mind, which added to a ſaying, otherwiſe falſe, and conſidered together with it makes a true ſpeech; only we may add, that this kind of practiſe, if we may be allowed to make a difference, ſeems more deſtructive of ſociety, and more oppoſite to the end of an oath, then *equivocation*; becauſe *equivocation* may be hindred, where due care and diligence is uſed that there be no ambiguity of words; but *mental reſervations* can never be prevented. For example; a man ſwears he uſeth no *equivocation*, or *mental reſervation*, or *ſecret evaſion*, meaning, he uſeth none *that* he is willing to make known. Theſe things, if they would ſerve to excuſe a man, were enough to baniſh all oaths and promiſes from humane Society, and to bring it to that paſs, that no man ſhould be truſted ever the more becauſe of them.

There

There are ſome who can be contended to admitt of ſwearing to *Statutes* with ſuch *reſerves* as theſe; *ſo far as they are agreeable to the Laws of God and of the land, ſaving all oaths by me formerly taken*, and ſuch like. But if this be underſtood of ſecret *reſervations*, it will give way to all manner of fraud. What oath can then be too hard for men of this perſuaſion to ſwallow? A man may ſwear to the *Alcoran*, ſo far as it is agreeable to the word of God, and the Laws of the land; or take a quite contrary oath to morrow to what he hath ſworn to day. And although it be true, that no oath can bind us any farther, then the rules of juſtice and honeſty will allow us to go; yet it will not follow from hence, that a man may ſwear to what he thinks unjuſt, uſing for a private *Salvo*, ſo far as it is agreeable to the rules of juſtice. For he that takes an oath, doth thereby own the performance of it, ſo far as he knows, to be lawfull, and agreeable to thoſe rules, which he is otherwiſe bound to obſerve and keep.

Nevertheleſs, where ſome particular reſervations are publickly known and granted, by them that do require, as well as by them that do take the oath, it is as lawfull to uſe them, as if they were expreſsly ſet down in the words of the oath it ſelf.

3. What if a man ſwears, and doth not intend to ſwear? We muſt acknowledge, that there is ſomething of intention always required to an oath. Wherefore he cannot be ſaid to have ſworn, who only reads over the words of an oath to acquaint himſelf or another perſon with it, or he that in ſwearing perſonates

ſonates another man, or he that knoweth not what an oath means, or he that hath brought himſelf to ſuch an ill habit of ſwearing, that he cannot tell whether he ſwears or no. But when a man ſpeaks the words of an oath, to the intent that he may be thought to ſwear, by the perſon to whom the oath was to be directed, whatever elſe his intentions were, he hath undoubtedly ſworn; becauſe he hath invoked the Holy Name of God, to procure himſelf to be believed.

4. It would be likewiſe a frivolous excuſe, for any one to ſay, *he intended to ſweare*, but *did not intend to be obliged.* Such a pretence is grounded on this argument; that no oath can oblige beyond the *intention* of him that ſwears, and by conſequence, he that ſwears having no *intention* to be obliged, cannot be bound to any thing at all. But in anſwer to this, I ſhall ſhew hereafter, how far, in the interpretation of an oath, we are to regard the *intention* of him that ſwears: for the preſent it may ſuffice to ſay, that if a man intends to ſwear, the oath in its own nature includes an obligation, whether he intends to be obliged or no. And ſuch as this, or elſe the very ſame with it, is their opinion who will have a man to be free from the obligation of his oath, if at the time of taking it he did not *intend to keep it.* Which is in plain terms as much as to ſay, that a man is not perjured, or is not unfaithfull, becauſe he is: for what is perjury, or what is unfaithfulneſs, if that be not, for a man to ſwear to do a thing, and at the ſame time intend to do quite contrary? what can be more abſurd then to ſuppoſe

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that both theſe ſins may be taken off, by adding a third ſin of Hypocriſy? But as we may not, without limitation, accept the ſenſe of the ſwearer, ſo neither

2. Are we always to interprete an oath according to the ſenſe of the Impoſer. It being unreaſonable to give him ſo great a power over another mans conſcience, as to oblige him, eſpecially when the oath is deceitfully worded, to a ſenſe very different from, if not directly oppoſite to, what he promiſed before God to do, and apprehended to be the Impoſers meaning; an eminent inſtance whereof there was, in the *Solemn League and Covenant.* If therefore, *bona fide*, he that takes the oath, thinks it means one thing, and he that requires it, means another; the ſwearer is not obliged to go beyond his own meaning; becauſe no act can bind a man that is not voluntary, and a mans will cannot reach to an unknown object.

But the caſe is otherwiſe, when the error is *extrinſecal* to the ſubſtance of the oath; yea, though it give cauſe to the oath it ſelf, which, unleſs that error had intervened, would never have been made. Nor will it ſuffice for a man to ſay, if he had known this or that he would not have ſworn: for he ſhould have conſidered that before, and expreſſed it as a condition; which if he neglect to do, he is bound to as much as his oath contains: thus the oath of *Joſua* held good, though the error, that the *Gibeonites* came from a *far Country*, gave cauſe to that oath, which ratified a League, that would hardly elſe have been granted to a people which was ſo numerous, and poſſeſsed ſo conſiderable a part of Country.

If

If a man erreth about the conſequences of his promiſſory oathe, ſuch as we have not already taken notice of, are twofold, either hurtfull to himſelf, or to the perſon to whom he hath ſworn.

The hurt of the ſwearer is not ſufficient to deprive another man of that right, which the promiſſory oath hath conferred upon him; and though the damage may poſſibly be ſo great, that the other ought in equity to releaſe him, (too rigorous exacting of juſtice, being ſometimes no better then an injury) yet it is not fit that he who is a debter to another man, ſhould, upon pretence of ſome private inconveniences, have power to releaſe himſelf.

But if the act be manifeſtly hurtfull to the perſon for whoſe ſake the oath was taken, (manifeſtly, I ſay, to exclude certain poſſible or probable harms, ſuch as temptations to ſin, which every thing in the world may at ſometimes afford) then an oath is invalid; not becauſe of the ſwearers error, but by reaſon of the other mans power of relinquiſhing or commuting that which is his own, which if he either wanted opportunity, or were not otherwiſe in a condition expreſsly to do, it is to be preſumed that the oath did at firſt imply an exception to all ſuch accidents; it being contrary to all equity, that a man who owes another a good turn, under pretence of exactneſs in keeping his promiſe, ſhould have liberty to do him harm; which would be in truth a kind of perfidiouſneſs, however it might ſeem to be a performance of that which was promiſed.

But here perhaps it will be asked, ſeeing it is acknowledged,

knowledged, that if a man doth not rightly understand the imposers meaning, as to the contents of the oath, he is not bound; what if a man who is made a member of a certain Society or *Corporation*, swears duly to observe all the Laws and Customs thereof, or uprightly to discharge some particular office therein, when perhaps he doth not know all the Statutes belonging to such a *Corporation*, or all the duties incumbent upon such an office? I say, upon this occasion two questions may be asked. 1. Whether every one that hath thus sworn is guilty of a rash oath, as having sworn to more then he knows? 2. Whether an oath taken in words so comprehensive, doth oblige to the performance of every Statute? To resolve which questions we are to consider, what is either already expresly declared to be, or may otherwise justly be presumed to be the intention of the *Legislator*, and apply that to both of them.

As to the first of these; doubtless the intention of the *Legislator* was not, that every one should know, what those Statutes were before-hand, it being neither likely that they should be known, nor yet expedient that they should be communicated to every person; therefore the obligation was never intended, to lye upon any man farther, then those Laws and Customs with common diligence should come to his knowledge. It is farther observable, that he who finds any of them afterwards greivous to be born, may by relinquishing his privilege become free from his obligation. So that here is no

snare

ſnare laid for any mans Conſcience; 'tis in every mans power to ſave himſelf from the guilt of perjury if he will; conſequently this cannot upon the account of a mans not knowing Statutes before hand, be reputed a raſh oath. Again though it be ſaid, that a mans will cannot reach to an unknown object, yet it ſometimes is ſufficient if it be known in generall, though his underſtanding doth not reach to all the ſeveral parts of it. Thus when a man ſwears to obey another *in licitis & honeſtis*, it is not requiſite, that he ſhould know particularly every thing that will be commanded; ſo long as his oath contains a limitation, whereby he is ſecure from doing that which is unſeemly or unlawfull.

In order to give anſwer to the 2d. query, how far ſuch an oath doth extend? we may be aſſured that the principal intention of every *Legiſlator* is, to preſerve his *Corporation* that he makes Laws for. Thoſe Statutes therefore, of which we are in our Conſciences perſuaded, that they are of ſo great moment, as that the Conſtitution, Peace, Wellfare, Honour and Security of the Society to which we have ſworn, do depend upon them; we are certainly obliged unto by virtue of our oath; as alſo to thoſe particular Laws to which we have ſworn by name, and which we are ſaid in expreſs terms by virtue of our oath to be bound to obſerve. But as for other ordinances which are of ſmaller concern, it is ſufficient, where we keep not them, if we be content, without oppoſing of Authority, to undergoe the penalty annexed; which is ſometimes full as beneficial to the Society, as a punctual obſervance of Statutes; which is the

Vide explicationem juramenti post Statuta Univerſit. Oxon.

declared ſenſe of divers *Legiſlators*, particularly of ours of *this place*; and which is among moſt perſons very well known.

Again whereas 'tis poſſible, that among a great number of Statutes one may be found to contradict another, every one that hath ſworn to obſerve the ſaid Statutes, cannot for that reaſon be ſaid to be guilty of perjury, as having ſworn to both parts of a contradiction; becauſe the latter Statute, if made by equal Authority, doth invalidate the former, ſo that no man is any longer obliged to obſerve the former Statute, or any other that is, either expreſsly, or by conſequence, either by writing, or by a long prevailing cuſtome made null.

And this explication will appear to be more reaſonable, if we conſider

3^{ly}, That we are not always to follow that ſenſe which the words of the oath will bear. And this is eaſily deducible from what hath been already ſpoken; namely, that the end of an oath ought cheifly to be conſidered in its interpretation; ſo that the words are no otherwiſe to be obſerved, then as they are ſubſervient to the principal deſigne, according to which a man is obliged to perform, although the words, according to *Grammatical* conſtruction, doe not imply ſo much as was intended, or although they may be taken in different ſenſes. In vain therefore did thoſe men think to avoid breach of faith, who having made a truce for ſeveral days, fell upon their enemies quarters after Sun ſet, pretending that the nights were not included; and the *Roman* Legate, who having promiſed *Antiochus* half the

the ſhips divided every ſhip in half, and ſo made them all uſeleſs for a Sea fight; and the *Council* of *Conſtance*, that burnt *Huſs* after promiſe of ſafe conduct, unleſs they have a better excuſe, then we read of in *Molanus*, namely, that *it was promiſed he ſhould come ſafe thither, but not that he ſhould go ſafe home again.* *Molanus de fide hæreticis ſervanda lib. 2. cap. 3.*

To conclude then what hath been ſaid upon the ſecond general head. So far as the ſwearer apprehends the meaning of him that impoſeth, or of him that requireth the oath and ſupplies the place of the impoſer, or of him for whoſe ſake the oath is made, (for the caſe is alike in all) an oath binds. So that partly the ſenſe of the ſwearer may be ſaid to be followed, in as much as 'tis required, that he ſhould rightly underſtand the matter; partly that of the impoſer, in as much as it is not any conſtruction muſt ſerve, that the ſwearer can put upon it, but that which he was in his conſcience perſwaded to be agreeable to the impoſers meaning; but not at all the ſignification of the words, unleſs it be as they do effectually explain the intention of the one to the other.

By what hath been ſaid, we may be directed in the reſolution of ſuch difficulties as ordinarily do occur upon this ſubject, without being inquiſitive after every little nicety, without medling with every ſhift or evaſion that hath been invented by ſome men, who ſeeme to have made it their buſineſs to entangle their duty, and render it unintelligible. And we find *Prov.* 20. 25. that *it is a Snare to a man to devour that which is Holy, and after vows to make enquiry:* to bring upon himſelf thoſe ſacred and

and venerable obligations, and afterwards, inſtead of performing according to them, to ſeek ways how to be *diſpenſed* with, or how to come off. *After vows to make enquiry.* *Solomon* ſeems to account it a fault, after a man hath taken an oath or vowed a vow, ſo much as to *enquire* whether he ought to keep it or no. For though it ſufficiently appears from what hath been already ſpoken, that in ſome circumſtances a man may have a very juſt cauſe, to conſult and to adviſe both with himſelf and others, about the performance of his oath; yet over much forwardneſs in that kind, doth generally betoken too great an inclination to cavill at, to retract, and go off from what one hath done. When a man is in good earneſt reſolved to be honeſt, it is poſſible indeed that he may, but he ſeldom doth need much *enquiry* to find the way. Fidelity is very plain and eaſy, and the knowledge of it ſufficiently planted in every mans nature. A faithfull man hath a *ſure* and *ſtraight path to walk in*, needs not *turn to the right hand, or to the left*, it is not his buſineſs to do, and undoe, to ſay and unſay, to equivocate, and to falſify; he is not forced, as *Solomon* calleth it, *to pervert his ways*, to turn and wind himſelf every way for fear of being diſcovered. He doth hardly ſtand in need of any thing elſe in this matter, that hath an honeſt mind and a good conſcience to direct him. And therefore I ſhall inſiſt no longer upon caſes, but proceed to ſhew in the

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Again, whereas an oath duly and consideratelytaken, implies a pious acknowledgment of Gods cheif Attributes and prerogatives, his omnipresence, omniscience, omnipotence, justice and veracity; and consequently is a part of Religious worship, and as such enjoyned by God *Deut.* 6. 13. *Thou shalt fear the Lord thy God, and serve him, and shalt swear by his Name*; the not performing according thereunto, argues a disowning the forementioned Attributes, and is the greatest profanation of Gods worship.

It is an high advantage and privilege which God vouchsafeth to us, in that he gives us leave upon urgent and weighty causes to make use of his glorious Name, as a seal to confirme the truth of what we assert. If therefore we take it up to avouch a falsehood, we are exceedingly ungratefull, we falsify that Seal, we profane that dreadfull Name, we apply that which is most sacred to the worst of uses.

If we hope after so great a crime to escape unpunished, we do in effect ascribe that to God which is the Character of the Devil, that he is the Patron and encourager of lyes; whereby we make our selves, as the Scholemen rightly observe, guilty of a worse fault then theirs was who Crucified our Saviour. Bonds and imprisonment, and death it self are all to be preferred before sin; they have often been inflicted upon good men; they have not seldom been made choice of by them to avoid sin; he therefore that endeavours to bring God to share with him in his sin, *puts him* to a greater *shame*, offers a more hainous affront and indignity to Christ, then if he *spit in his face*, or put him to any bodily pain.

This

This ſin contains ſomething in it peculiar which makes repentance more difficult to be practiſed, pardon more hardly to be obtained, then in moſt others. For with what face can a man invoke that *Mercy* which he hath expreſsly renounced? how juſt is it, that he who hath thus diſclaimed Gods favour, ſhould be forſaken when he ſtands moſt in need of it? that he who hath thus abuſed the Holy Name of God, ſhould not be *heard* when he *calleth* upon that Name? although it be otherwiſe, as *Solomon* telleth us, *a ſtrong Tower, the righteous runneth unto it, and is ſafe.* Prov. 18. 10.

For theſe and the like cauſes, an oath hath generally been looked upon as a ſufficient aſſurance and confirmation of the truth of any matter; and men have ſometimes been tried by their own oaths, whether they have been guilty of capital crimes or no: as if it were beleived, that he who had committed the moſt hainous offenſes otherwiſe, would yet hardly venture upon that, though it were to ſave his life; could not poſſibly incurr it, without riſing to an higher pitch of wickedneſs then he was at before.

I ſhall not at large deſcribe all the ſeveral inferior ſins which are included in the breach of a promiſſory oath; but ſhall only in breif take notice, that if truth requires us to be ſincere in our promiſes, and afterwards carefull to perform that which we have promiſed; if a faileur in either of theſe parts be blameable, becauſe it is a falſehood, becauſe it is contrary to the ends of ſpeech, becauſe it is a deceiving of our neighbour and a breach of truſt, becauſe it is an infringement of juſtice to reſume that

right which we had before transferred, becauſe it is a violation of friendſhip, and an abſolute contradiction to that golden rule, of *doing to others as we would they ſhould do to us*, (every man being apt to complain that he is hardly dealt withall, whenſoever any by ſuch artifices hath circumvented him;) and laſtly, if *Faith*, that is, fidelity in our pacts and promiſes be, as our Saviour tells us *Mat.* 23.23. one of the moſt *weighty matters* of the Divine *Law*; what then will our condition be, when to all theſe obligations, we have added the higheſt that can be laid upon us, ſo that by breaking them we not only deſerve, but in expreſs terms invoke the vengeance of God, we do as it were engage God in honour, to vindicate his Name and his attributes from the abuſes and contempts that we have put upon them.

He that thus ſeriouſly conſiders what an oath is, cannot ſurely beleive that any man is above the obligation of it. So that that is an unſufferable maxime ſaid to be uſed in the *Court of Rome*; *non eſſe Regum aut Magiſtratuum, ſed mercatorum ſtare juramentis.* It is not a thing confined, either to one ſort of men, or to mankind only, but reacheth even to the Angels, as we find in the Holy Scriptures; yea (with reverence be it ſpoken) God himſelf is bound by his promiſe; and if to any promiſe of his, an oath be ſuperadded, (which in him is an appeal to ſome one of his Attributes, but implies no execration) the *Apoſtle* tells us they are *two immutable things*.

Dan. 12. 7. *Rev.* 10. 6. *Heb.* 6. 18.

And as no man can be too great for ſuch an obligation himſelf: ſo neither can any man *diſpenſe* with it in others. No more than he can with any other

part

part of the Morall Law: And therefore we may juſtly condemn a corrupt cuſtom uſed in ſome Countries, of ſuperiors *diſpenſing* with their ſubjects oaths. Which if ever it can be done, muſt be in caſe of ſome right by ſuch oaths either given to them, or unjuſtly taken from them or others. And theſe cannot properly be called diſpenſations; at leaſt not ſuch as do denote any peculiar power in them; for if any thing by ſuch oaths is given to them, who doubts but that they may recede from their own right, which any man elſe hath liberty to do? and ſuch oaths as would take any thing unjuſtly from them or any others, would be void without a *diſpenſation*. Neither yet can it be denied, but that in other caſes, ſo often as they are doubtfull, men wonld do well to betake themſelves to their own Clergy, or elſe to Doctors of the Law for advice and direction. But to ſuppoſe ſuch perſons able to *diſpenſe* with Perjury, or to make void an oath, otherwiſe valid, in which their own right was not concerned; is to give them leave to *diſpenſe* with and diſpoſe of other mens rights, and to make void the Laws of God, as in other reſpects, ſo particularly about that ſacred *bond*, which no cauſe (ſaving ſuch limitations as we have already taken notice of) can juſtify the violation of.

Though there have been ſome (who are ſo well known that I need not name them) that have held it lawfull for the ſake of *Religion* to break an oath; that is to ſay, to uphold *Religion* by taking away the main ſupport, and by hindring the whole benefit of it; to diſhonour God, to rob him of his At-

tributes, to profane his Holy Name, to break his Commandments, to renounce Salvation; and all this for the sake of *Religion.*

But whatever others may say in some circumstances is lawfull to be done for their *Religion*, I hope none of us do suppose such a practice allowable for the sake of our own; which is in a very bad case, if
*Rom.*3.8. that be the best expedient we can find to support it. *We must not do evill*, and if not any, then certainly not so great an evill, *that good may come.* God stands not in need of our good, much less of our evil actions. Truth, as it doth not need, so neither will it admit the assistance of falshood to keep it up. If it did, it would acquire only a reproach and disesteem to it self: for men do disparage any cause which by such methods they endeavour to mantain. And 'tis utterly impossible that ever the true Religion should allow of such practises as overturn the foundations of all *Religion.*

Wherefore we are all of us obliged for the honour of our God, and of our Religion, for our own sake,
Numb. 30. 2. and for the hope that we have of everlasting Salvation, when we *have taken an oath to bind our Souls with a bond, not to break our word, but to do according to*
*Deut.*23. 21. *all that proceedeth out of our mouth; when we have vowed a vow unto the Lord not to neglect to pay it; for the Lord our God will surely require it of us.*

F I N I S.

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